

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

PUBLIC SERVICE COMPANY OF
COLORADO,

Employer,

and

Case No. 27-RC-7994

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO. 111,

Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that Public Service Company of Colorado, a public utility herein called the Employer, is a Colorado corporation, with a principal place of business in Denver, Colorado, and is engaged in the retail and non-retail supply of electricity and gas. During the last calendar year, the Employer received revenues in excess of \$250,000 and purchased goods valued in excess of \$50,000 directly from suppliers located outside the State of Colorado. I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Further, I find that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that International Brotherhood of Electrical Workers, Local No. 111, herein called the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of section 9(c)(1) and Section 2(6) and (7) of the Act.

STATEMENT OF THE CASE

A. Background

The Employer is a public utility engaged in the generation and distribution of electric power and gas to consumers throughout the State of Colorado. The Employer maintains high-pressure pipelines through which gas is delivered to cities and towns in Colorado. Gas is delivered from the high-pressure pipes to low pressure pipes that supply gas directly to the homes and businesses of the Employer's customers. This intricate network of pipes connects customers with regional gas suppliers and regional

pipelines. The eight gas system controllers at issue are responsible for monitoring the Employer's entire high-pressure pipeline system and portions of the low-pressure system.

Since 1946, the Petitioner has represented the Employer's operating, production, and maintenance employees, in a statewide unit, herein referred to as the OP & M unit, of approximately 2,000 employees. The most recent collective bargaining agreement, which was initially effective from June 1, 1987 to May 31, 2000, has been modified to extend until the year 2002. Gas system controllers have never been represented by the Petitioner and there is no bargaining history between the gas system controllers and the Employer. The Petitioner seeks an election under the procedures established by the Board in *The Globe Machine and Stamping Co.*, 3 NLRB 294 (1937), to determine whether the eight gas system controllers will join the existing OP & M unit. The Employer maintains that the gas system controllers are supervisors under Section 2(11) of the National Labor Relations Act and that they should be excluded from the existing bargaining unit for that reason.

In *Mississippi Power and Light*, 328 NLRB No. 146 (1999), the Board recently overruled its prior holding in *Big Rivers Electric Corp.*, 266 NLRB 380 (1983) and held that employees who monitor electrical power distribution were not supervisors pursuant to Section 2(11) of the Act. Based on that decision, on November 4, 1999, the Regional Director for Region 27 issued a Decision and Direction of Election in Case No. 27-RC-7984, finding that six electrical distribution operators employed by the Employer were to be included in the OP & M unit.¹ In that matter, the Regional Director rejected the Employer's argument that the electrical distribution operators were supervisors within the

¹ At the hearing in the present matter, the hearing officer took administrative notice of the Regional Director's Decision and Direction of Election in Case No. 27-RC-7984.

meaning of Section 2(11) of the Act. Additionally, the Regional Director concluded that the six electrical distribution operators had a sufficient community of interest with the OP & M unit as demonstrated by their similar work functions, employee contacts, common supervision, and regularity and substantiality of working hours per week. Subsequently, on December 15, 1999, the Regional Director issued a Corrected Certification of Representative certifying that a majority of the valid ballots in Case 27-RC-7984 had been cast for the Petitioner and that the Union is the exclusive collective-bargaining representative of the distribution and/or substation operators.

The Petitioner argues that the job of the gas system controllers is analogous to that of the electrical distribution operators's job in many ways as set forth in the Regional Director's Decision and Direction of Election in Case 27-RC-7984. Thus, Petitioner contends that the gas system controllers are not supervisors under Section 2(11) of the Act and that they should also be afforded the opportunity to be included in the OP & M unit.

The Employer argues that the Board's decision in *Mississippi Power and Light* is not applicable in the matter at hand, because that decision involved employees who monitor electrical distribution lines, while this matter involves the operation of the Employer's gas supply system. In addition, the Employer maintains that the Employer's gas system controllers perform a different function than the employees at issue in *Mississippi Power and Light* and that they exercise more independent supervisory judgement. Thus, the Employer argues that the gas system controllers are supervisors under Section 2(11) of the Act. Alternatively, the Employer contends that, if it is determined that the gas system controllers are not statutory supervisors, they should be

represented in their own separate unit, as they do not share a sufficient community of interest with the OP & M unit employees.

B. Relevant Facts

Curt Dallinger has been the Employer's Manager of Gas Control since November 1, 1999. In that capacity, Dallinger is responsible for supervising the Employer's eight gas system controllers. Dallinger also supervises a gas coordinator who is responsible for handling the gas supply agreement and taking nominations, and two gas control analysts who are responsible for repairing any technical problems that may arise with the computer system used to monitor the gas system. Gas coordinators and gas control analysts are not part of the group of employees that the Petitioner seeks to represent.

The gas system controllers are required to monitor the entire gas system and to make adjustments as needed in order to ensure that there is an appropriate supply of gas. Thus, for example, an adjustment might be required if there is a cold morning in a particular geographic area and there is a high demand for gas. In such a case, a gas system controller would be required to make an adjustment so that the pressure in that area would not fall too low. Gas system controllers must recognize this drop in pressure and correct the problem. They have several options available to them in making necessary adjustments to the gas pressure. Some of these options involve adjusting the system remotely through a computer system and others involve communicating with field employees. There is no manual upon which a gas system controller can rely upon to decide which course of action to follow. These decisions are based upon the controllers' training, knowledge, and experience.

A gas system controller can adjust the gas pressure in a certain area by diverting gas from the northern system down to what is called Yosemite Station in order to increase the gas pressure in a problem area. A gas system controller can also divert the gas in the system from an area with less consumption to the area with more consumption. A final option available to the gas system controller would be to adjust the pressure by increasing the amount of gas in the system by bringing gas in from a gas storage facility located in an abandoned coal mine called Leyden. Gas can be sent to Leyden by merely turning the valve on and off through the use of a computer. However, in order to increase the pressure in a problem area by removing gas from Leyden, a gas system controller would be required to call the field operator on duty at Leyden by telephone and instruct him or her to increase the pressure in the system.² In such a circumstance, the field operator would be told what amount of gas pressure to release, the time when it should be released, how long to release it, and when it should be shut off. During an average winter, gas system controllers call the field operator on duty at Leyden an average of three to four times a week.

In performing their job duties and responsibilities, gas system controllers must also monitor the Employer's entire gas system on a computer system known as SCADA.³ Such monitoring is not done manually, due to the size of the gas system. The SCADA system will alert gas system controllers of potential problems by sounding an alarm. Once an alarm goes off, a gas system controller must determine whether or not a response is required. If it appears that it is a data problem, an electronics technician will be sent

² Field operators are members of the OP & M unit.

³ SCADA stands for supervisory control and data acquisition.

out to take care of the problem. If it appears that the alarm represents a problem with a pipe, the gas system controller will send out field personnel such as a pipefitter or field operator to make the repair. Again, there are no standards or written guidelines that gas system controllers utilize in determining whether or not an alarm needs to be responded to by a field employee or what sort of employee that should be.⁴ The gas system controller must rely solely on his knowledge and experience in making these determinations.

Generally, gas system controllers are not required to go through management to send out a field employee to make a repair if they are on duty. However, there may be instances when the field employee might be called after hours. On those occasions, a gas system operator would first call a field operator's supervisor who would, in turn, call the field operator to report to work. If an alarm indicates that there might be a gas line break, the gas system operator would call the gas dispatcher at the Employer's Third Avenue and Lipan facility.⁵ The gas dispatcher would then dispatch the service fitters needed to make the necessary repairs.⁶ The gas system controller would then be in contact with the service fitter either by radio or telephone and would be checking the SCADA system to ensure that the problem was repaired. Gas system controllers have daily contact with employees covered in the OP & M unit either by telephone or radio but not by face to face contact.

⁴ The Employer maintains a record of the number of alarms that appear on the SCADA system on a daily basis that is referred to as an events log. On one particular date, there were approximately 300 alarms. Less than ten of those alarms required an employee to respond. When gas system controllers receive multiple alarms, they can deal with and prioritize them in the manner they deem necessary.

⁵ The SCADA system does not detect gas leaks per se. It does, however, detect a loss in pressure and that may constitute a leak.

⁶ Service fitters and gas dispatchers are in the OP & M unit.

Additionally, when a bargaining or non-bargaining unit employee is going to take certain equipment out of service or do something to the system that would interrupt the gas service, he or she must contact a gas system controller and ask permission to do so. Dallinger testified that gas system controllers have final say over whether or not a piece of equipment can be taken out of service, because they are the only employees who can see the whole system and decide whether that piece of equipment is critical to operations on a given day.

The field employees whom the gas system controllers call for assistance in the field do not report directly to the gas system controllers. Further, gas system controllers do not have the authority to hire, evaluate, promote, transfer, discipline, lay off, recall or discharge employees. They also do not set the work schedules for employees at Leyden or for any other field employees with whom they deal on a daily basis. Gas system controllers cannot authorize any field employees who are on duty to work overtime. Either the gas system controller or the field employee will normally contact the field employees' supervisor to get approval for overtime.⁷

Gas system controllers are on duty 24 hours a day, 7 days a week. They typically work 12 hour shifts three days a week and then every other week they work an eight hour shift on a Sunday. The 12-hour shift goes from 5:00 a.m. to 5:00 p.m. and then 5:00 p.m. to 5:00 a.m. The eight gas system controllers are divided between the two shifts. O & M unit employees are generally required under the current collective bargaining agreement

⁷ Employee Michael R. Smice is currently employed by the Employer as a gas system controller. Smice testified that on rare occasions when a supervisor is not available, he might be required to ask a field employee to work overtime. In such instances, he will consult with the field employee and determine how long the job will take. If this repair will involve one or two hours of overtime, the field employee and the gas system controller will agree that the repair should be made. Smice further testified that supervisors have agreed that in such instances involving only one or two hours of overtime, the supervisors do not have to be contacted.

to work eight hour shifts. However, there are some bargaining unit employees in job classifications requiring 24 hour coverage who work either 10 or 12 hours shifts.

All gas system controllers are stationed in a secured facility known as Lookout Center in Golden, Colorado. Approximately 125 to 150 individuals work at that location. Employees who work at Lookout Center can enter the facility only with a special clearance identification. A regular identification issued by the Employer would not be sufficient to gain entry into the facility. One electrician specialist who is part of the OP & M unit works at Lookout Center on an as needed basis.

Gas system controllers are rated at Grade Level 86. Under this pay scale, the eight gas system controllers earn between \$25.53 to \$28.63 per hour. The highest pay level for the O & M unit employees is \$26.94 per hour.

The gas system controllers talk to gas field personnel by means of a radio or telephone; never in person. They do not take breaks or eat lunch with bargaining unit employees. Generally, gas system controllers take their lunch breaks at their work station on company time since the gas system requires 24-hour monitoring.

The benefits received by gas system controllers and O & M unit employees are somewhat different. All benefits for OP & M employees are governed by the collective bargaining agreement negotiated by the Employer and the Petitioner.

ANALYSIS AND CONCLUSION

As stated above, the Employer contends that the gas system controllers are statutory supervisors and should be excluded from any collective bargaining unit. In contrast, the Petitioner takes the position that gas system controllers, like the distribution

dispatchers and the system dispatchers in *Mississippi Power and Light*, are not supervisors within the meaning of Section 2(11) of the Act.

Section 2(11) of the Act defines the term "supervisor" as:

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

An individual who possesses any of the supervisory indicia listed above will be deemed to be a supervisor only if the authority is exercised with independent judgement on behalf of the employer and not in a routine manner. See *Panaro & Grimes, d/b/a Azusa Ranch Market*, 321 NLRB 811 (1996), citing *Chicago Metallic Corp.*, 273 NLRB 1677 (1985), and *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). An individual who exercises some "supervisory authority only in a routine, clerical, perfunctory or sporadic manner" will not be found to be a supervisor. Leadmen and other "minor supervisors" are not necessarily statutory supervisors. *George C. Foss Co.*, 270 NLRB 232, 234 (1984), enf. 752 F. 2d 1407 (9th Cir. 1985). In determining whether an individual is a supervisor, the Board has a duty not to construe supervisory status too broadly, because the employee who is found to be a supervisor is denied rights that are protected under the Act. *Hydro Conduit Corp.*, 254 NLRB 433 (1981). The burden of proving that an individual is a supervisor rests on the party alleging such status. See *Adco Electric*, 307 NLRB 1113 (1992); *Tucson Gas & Electric Company*, 241 NLRB 181 (1979); and *California Beverage Co.*, 283 NLRB 328 (1987).

In the instant case, the record evidence is uncontroverted that gas system controllers do not have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances of employees or to effectively recommend such action. Nevertheless, the Employer argues that gas system controllers are supervisors under Section 2(11) of the Act because they assertedly assign and responsibly direct other employees using independent judgement. In support of its argument, the Employer contends that *Mississippi Power and Light* is distinguishable from the present case in that the gas system controllers herein exercise greater authority to direct field personnel than the distribution dispatchers and system dispatchers in *Mississippi Power and Light*. The Employer also argues that *Mississippi Power and Light* is further distinguishable because the gas system controllers in this matter can directly call out field personnel, can send field personnel from one location to another and can authorize field personnel to work overtime. Contrary to the Employer's argument, I find that, although *Mississippi Power and Light* involved employees who monitored electrical distribution lines and not a gas supply system as in the present matter, it is nevertheless controlling.

In *Mississippi Power and Light* distribution dispatchers and the system dispatchers directed field employees as to switching sequences to follow in emergencies. Additionally, in that case the distribution dispatcher's role in assigning field employees included calling in additional troublemen or line crews for major problems; dispatching crews to trouble spots; setting priorities on the order of work and assigning themselves overtime. In the instant case, gas system controllers direct field employees to make gas flow adjustments or repairs on the gas system in emergencies. Additionally, the gas

system controllers at hand must set priorities as to the handling of various alarms that may simultaneously exist. The distribution dispatchers and system dispatchers in *Mississippi Power and Light* also designed their own switching orders and then communicated with the field employees in their implementation. Here, gas system controllers must determine how to make gas flow adjustments and then communicate the same to field employees. The Board in *Mississippi Power and Light* concluded that the judgement exercised by the dispatchers in selecting or designing switching sequences was a function of the dispatch work, based on their training, knowledge, and experience and that it did not constitute the exercise of independent supervisory judgment. Also, in *Mississippi Power and Light*, the Board found that the dispatcher's communication with field employees regarding the implementation of switching sequences did not entail the exercise of statutory independent judgment, but rather the almost routine or clerical relay of complex schemata. *Id.* at 15. I find that the gas system controllers in the instant matter similarly do not exercise independent judgment in regard to directing the work of unit employees sufficient to warrant a finding that the gas system controllers are supervisors within the meaning of the Act.

Rather, the record establishes that gas system controllers merely direct field employees in a routine fashion so that there is no disruption to the gas service that the Employer is required to provide to its customers. The direction of co-workers based upon familiarity with the work to be accomplished is insufficient to establish supervisory authority. *Quandrex Environmental Co.*, 308 NLRB 101 (1992); *Providence Hospital*, 320 NLRB 717 (1996); and *Millard Refrigeration Services, Inc.*, 326 NLRB 156 (1956).

Although gas system controllers may approve employees to work overtime, it is

undisputed that they have previously been given permission by supervisors to permit employees to work one or two hours of overtime. Thus, it would appear from the record that the need for overtime is dictated by a need to complete what may be an emergency situation as quickly as possible. Altering work by ceasing work or working overtime on limited occasions does not establish Section 2(11) supervisory status. *JC Brock Corp.*, 314 NLRB 157, 158 (1994). See also, *Chevron Shipping Company*, 317 NLRB 381 (1995) and *First Western Building Services*, 309 NLRB 591, 602 (1992).

Moreover, the compensation received by the Employer's gas system controllers as compared to at least some of the OP & M unit employees is roughly equivalent. Additionally, pay rates are clearly a secondary indicia of supervisory status. As such, absent evidence of primary indicia, the fact that a gas system controller is generally paid more than most bargaining unit employees would be insufficient to warrant a finding that an individual was a true supervisor under Section 2(11) of the Act. Finally, in this regard I note that, unlike the gas system controllers at issue, most of the Employer's managers and supervisors are salaried.

In summary, I conclude that the gas system controllers are not supervisors within the meaning of Section 2(11) of the Act. I further find that the gas system controllers herein sought by the Petitioner possess no significant group homogeneity, apart from the represented operating, production and maintenance employees, which would warrant their establishment in a separate appropriate unit. Rather, I find that the unrepresented gas system controllers share a sufficiently strong community of interest with the operating, production and maintenance employees to entitle the gas system controllers to be represented by the Petitioner in the currently established collective-bargaining unit, if

they so desire. This community of interest is demonstrated by the transfer of employees from the bargaining unit to the gas system controller position, similar work functions, employee contacts, regularity and substantiality of working hours per week, similarity in training, skills and job functions, and the integration of operations.

Accordingly, I direct an election in the following group for this purpose:

All full time and regular part time gas system controllers; excluding gas coordinators, gas analysts, professional employees, confidential employees, guards, supervisors as defined in the Act, and all other employees.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be deemed to have indicated their desire to be included in the existing operating, production, and maintenance employees unit currently represented by Petitioner, and it may bargain for those employees as part of that unit. If a majority of ballots are cast against representation, the employees will be deemed to have indicated the desire to remain unrepresented, In that event, a certification of results of election will be issued.

See *The Globe Machine and Stamping Co.*, supra.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.⁸ Eligible to

⁸ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 111**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the *full*

names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the **Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-5433 on or before January 21, 2000.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 28, 2000.** In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 14th day of January 2000.

Wayne L. Benson, Acting Regional Director
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